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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

NATIONWIDE INSURANCE
COMPANY OF AMERICA, as Subrogee
for William Davis,

Plaintiff,

v.

BROAN-NUTONE LLC, a Delaware
limited liability company,

Defendant.

No. 1:21:CV-03158-TOR

**STIPULATED PROTECTIVE
ORDER**

STIPULATION

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the Court to enter the following Stipulated Protective Order. It does not confer blanket protection on all disclosures or responses to discovery. The protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential

1 treatment under the applicable legal principles, and it does not presumptively entitle
2 parties to file confidential information under seal. The parties to this action stipulate
3 that the following Protective Order applies to documents and information produced
4 or disclosed in this case.

5 **2. “CONFIDENTIAL” MATERIAL**

6 “Confidential” material shall include the following documents and tangible
7 things produced or otherwise exchanged:

8 (a) Sensitive financial and commercial information that is not otherwise
9 publicly available;

10 (b) Confidential personal information for the parties and their agents;

11 (c) Any other information that a party in good faith believes constitutes or
12 includes sensitive business or organizational information, or personal
13 information or information furnished in confidence by any third party,
14 which information is not known or freely accessible to the general
15 public.

16 **3. SCOPE**

17 The protections conferred by this agreement cover not only confidential
18 material (as defined above), but also (1) any information copied or extracted from
19 confidential material; (2) all copies, excerpts, summaries, or compilations of
20 confidential material; and (3) any testimony, conversations, or presentations by
21 parties or their counsel that might reveal confidential material. However, the
22 protections conferred by this agreement do not cover information that is in the public
23 domain or becomes part of the public domain through trial or otherwise.

24 **4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL**

25 **4.1 Basic Principles.** A receiving party may use confidential material that
26 is disclosed or produced by another party or by a non-party in connection with this

1 case only for prosecuting, defending, or attempting to settle this litigation.
2 Confidential material may be disclosed only to the categories of persons and under
3 the conditions described in this agreement. Confidential material must be stored and
4 maintained by a receiving party at a location and in a secure manner that ensures that
5 access is limited to the persons authorized under this agreement.

6 **4.2 Disclosure of “CONFIDENTIAL” Information or Items.** Unless
7 otherwise ordered by the court or permitted in writing by the designating party, a
8 receiving party may disclose any confidential material only to:

9 (a) the receiving party’s counsel of record in this action, as well as
10 employees of counsel to whom it is reasonably necessary to disclose the information
11 for this litigation;

12 (b) the officers, directors, and employees (including in-house counsel) of
13 the receiving party to whom disclosure is reasonably necessary for this litigation;

14 (c) experts and consultants to whom disclosure is reasonably necessary for
15 this litigation and who have signed the “Acknowledgment and Agreement to Be
16 Bound” (Exhibit A);

17 (d) the Court, court personnel, and court reporters and their staff;

18 (e) copy or imaging services (including any e-discovery vendors) retained
19 by counsel to assist in the duplication and production of confidential material,
20 provided that counsel for the party retaining the copy or imaging service instructs
21 the service not to disclose any confidential material to third parties and to
22 immediately return all originals and copies of any confidential material;

23 (f) during their depositions, witnesses in the action to whom disclosure is
24 reasonably necessary and who have signed the “Acknowledgment and Agreement
25 to Be Bound” (Exhibit A), unless otherwise agreed by the designating party or
26 ordered by the Court. Pages of transcribed deposition testimony or exhibits to

depositions that reveal confidential material must be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this agreement;

(g) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information;

(h) a mediator, or similar alternative dispute resolution neutral, and his or her staff.

Notwithstanding the foregoing or any other provision of this Stipulation, a designating party may disclose or make use of its own confidential material in any manner it deems appropriate.

4.3 Filing Confidential Material. Before filing confidential material or discussing or referencing such material in court filings, the filing party shall confer with the designating party to determine whether the designating party will remove the confidential designation, whether the document can be redacted, or whether a motion to seal or stipulation and proposed order is warranted.

5. DESIGNATING PROTECTED MATERIAL

5.1 Exercise of Restraint and Care in Designating Material for Protection. Each party or non-party that designates information or items for protection under this agreement must take care to limit any such designation to specific material that qualifies under the appropriate standards. The designating party must designate for protection only those parts of material, documents, items, or oral or written communications that qualify, so that other portions of the material, documents, items, or communications for which protection is not warranted are not swept unjustifiably within the ambit of this agreement.

Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown to be clearly unjustified or that have been made for an improper

1 purpose (e.g., to unnecessarily encumber or delay the case development process or
2 to impose unnecessary expenses and burdens on other parties) expose the
3 designating party to sanctions.

4 If it comes to a designating party's attention that information or items that it
5 designated for protection do not qualify for protection, the designating party must
6 promptly notify all other parties that it is withdrawing the mistaken designation.

7 **5.2 Manner and Timing of Designations.** Except as otherwise provided
8 in this agreement (see, e.g., second paragraph of section 5.2(a) below), or as
9 otherwise stipulated or ordered, disclosure or discovery material that qualifies for
10 protection under this agreement must be clearly so designated before or when the
11 material is disclosed or produced.

12 (a) Information in documentary form (e.g., paper or electronic documents
13 and deposition exhibits, but excluding transcripts of depositions or other pretrial or
14 trial proceedings): The designating party must affix the word "CONFIDENTIAL"
15 to each page that contains confidential material. If only a portion or portions of the
16 material on a page qualifies for protection, the producing party also must clearly
17 identify the protected portion(s) (e.g., by making appropriate markings in the
18 margins).

19 (b) Testimony given in deposition or in other pretrial or trial proceedings:
20 The parties and any participating non-parties must identify on the record, during the
21 deposition or other pretrial proceeding, all protected testimony, without prejudice to
22 their right to so designate other testimony after reviewing the transcript. Any party
23 or non-party may, within fifteen days after receiving the transcript of the deposition
24 or other pretrial proceeding, designate portions of the transcript, or exhibits thereto,
25 as confidential. If a party or non-party desires to protect confidential information at
26 trial, the issue should be addressed during the pre-trial conference.

(c) Other tangible items: The producing party must affix in a prominent place on the exterior of the container or containers in which the information or item is stored the word “CONFIDENTIAL.” If only a portion or portions of the information or item warrant protection, the producing party, to the extent practicable, shall identify the protected portion(s).

5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate qualified information or items does not, standing alone, waive the designating party’s right to secure protection under this agreement for such material. Upon timely correction of a designation, the receiving party must make reasonable efforts to ensure that the material is treated in accordance with the provisions of this agreement.

6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

6.1 Timing of Challenges. Any party or non-party may challenge a designation of confidentiality at any time. Unless a prompt challenge to a designating party’s confidentiality designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens, or a significant disruption or delay of the litigation, a party does not waive its right to challenge a confidentiality designation by electing not to mount a challenge promptly after the original designation is disclosed.

6.2 Meet and Confer. The parties must make every attempt to resolve any dispute regarding confidential designations without Court involvement. Any motion regarding confidential designations or for a protective order must include a certification, in the motion or in a declaration or affidavit, that the movant has engaged in a good faith meet and confer conference with other affected parties in an effort to resolve the dispute without Court action. The certification must list the

1 date, manner, and participants to the conference. A good faith effort to confer
2 requires a face-to-face meeting or a telephone conference.

3 **6.3 Judicial Intervention.** If the parties cannot resolve a challenge without
4 Court intervention, the designating party may file and serve a motion to retain
5 confidentiality. The burden of persuasion in any such motion shall be on the
6 designating party. Frivolous challenges, and those made for an improper purpose
7 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may
8 expose the challenging party to sanctions. All parties shall continue to maintain the
9 material in question as confidential until the Court rules on the challenge.

10 **7. PROTECTED MATERIAL SUBPOENAED OR ORDERED** 11 **PRODUCED IN OTHER LITIGATION**

12 If a party is served with a subpoena or a court order issued in other litigation
13 that compels disclosure of any information or items designated in this action as
14 “CONFIDENTIAL” that party must:

15 (a) promptly notify the designating party in writing and include a copy of
16 the subpoena or court order;

17 (b) promptly notify in writing the party who caused the subpoena or order
18 to issue in the other litigation that some or all of the material covered by the subpoena
19 or order is subject to this agreement. Such notification shall include a copy of this
20 agreement; and

21 (c) cooperate with respect to all reasonable procedures sought to be
22 pursued by the designating party whose confidential material may be affected.

23 **8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

24 If a receiving party learns that, by inadvertence or otherwise, it has disclosed
25 confidential material to any person or in any circumstance not authorized under this
26 agreement, the receiving party must immediately (a) notify in writing the designating

1 party of the unauthorized disclosures, (b) use its best efforts to retrieve all
 2 unauthorized copies of the protected material, (c) inform the person or persons to
 3 whom unauthorized disclosures were made of all the terms of this agreement, and
 4 (d) request that such person or persons execute the “Acknowledgment and
 5 Agreement to Be Bound” that is attached hereto as Exhibit A.

6 **9. INADVERTENT PRODUCTION OF PRIVILEGED OR**
 7 **OTHERWISE PROTECTED MATERIAL**

8 When a producing party gives notice to receiving parties that certain
 9 inadvertently produced material is subject to a claim of privilege or other protection,
 10 the obligations of the receiving parties are those set forth in Federal Rule of Civil
 11 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure
 12 may be established in an e-discovery order or agreement that provides for production
 13 without prior privilege review. The parties agree to the entry of a non-waiver order
 14 under Fed. R. Evid. 502(d) as set forth herein.

15 **10. NON-TERMINATION AND RETURN OF DOCUMENTS**

16 Within 60 days after the termination of this action, including all appeals, each
 17 receiving party must return all confidential material to the producing party, including
 18 all copies, extracts and summaries thereof. Alternatively, the parties may agree upon
 19 appropriate methods of destruction.

20 Notwithstanding this provision, counsel are entitled to retain one archival
 21 copy of all documents filed with the court, trial, deposition, and hearing transcripts,
 22 correspondence, deposition and trial exhibits, expert reports, attorney work product,
 23 and consultant and expert work product, even if such materials contain confidential
 24 material.
 25
 26

1 The confidentiality obligations imposed by this agreement shall remain in
2 effect until a designating party agrees otherwise in writing or a court orders
3 otherwise.

4 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

5
6 DATED: August 17, 2022

signed at ECF No. 15-1 at 9.

7 Mark A. Horey, Bar No. 33558
8 *Attorneys for Plaintiff*
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10 1730 Minor Avenue, Suite 1130
11 Seattle, Washington 98101
12 Telephone: (206) 403-4800
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14
15 DATED: August 19, 2022

/s/ Todd W. Rosencrans

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17 Alletta S. Brenner, OSB No. 142844
18 *(admitted pro hac vice)*
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1 PURSUANT TO STIPULATION, IT IS SO ORDERED

2 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the
3 production of any documents in this proceeding shall not, for the purposes of this
4 proceeding or any other federal or state proceeding, constitute a waiver by the
5 producing party of any privilege applicable to those documents, including the
6 attorney-client privilege, attorney work-product protection, or any other privilege or
7 protection recognized by law.
8

9 DATED: September 16, 2022.



A handwritten signature in blue ink that reads "Thomas O. Rice".

Thomas O. Rice.
United States District Court Judge

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address], declare
under penalty of perjury that I have read in its entirety and understand the Stipulated
Protective Order that was issued by the United States District Court for the Eastern
District of Washington on _____ in the case of *Nationwide Insurance Company of
America v. Broan-NuTone, LLC* (1:21:CV-03158-TOR). I agree to comply with and
to be bound by all the terms of this Stipulated Protective Order and I understand and
acknowledge that failure to so comply could expose me to sanctions and punishment
in the nature of contempt. I solemnly promise that I will not disclose in any manner
any information or item that is subject to this Stipulated Protective Order to any
person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court
for the Eastern District of Washington for the purpose of enforcing the terms of this
Stipulated Protective Order, even if such enforcement proceedings occur after
termination of this action.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: